

## CHAPTER 59A. WETLAND CONSERVATION

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### 59A. WETLAND CONSERVATION

59A.01. Purpose. This ordinance is adopted to implement the Wetland Conservation Act of 1991, (Minn. Laws 1991 chapter 354, as may have been amended from time to time ("WCA")), and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minn. Rules Chapter 8420, as amended); and to protect the biological diversity and water quality and water quantity benefits of wetlands and related features particularly in areas of the City with significant groundwater discharge, interflow and recharge characteristics.

59A.02. Definitions and Map. Subdivision 1. Incorporation by Reference. This ordinance incorporates by reference the WCA and Minnesota Rules Chapter 8420. Except as provided in Subdivisions 2 through 6, terms used in this ordinance which are defined in the Act or the Rules have the meanings given there.

Subd. 2. Decorah Edge. The term "Decorah Edge" shall include the area:

- A. In which the Decorah, Platteville or Glenwood formation is the first-encountered bedrock according to the "Bedrock Geology: Steele, Dodge, Olmsted and Winona Counties" data plat produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation, reliable well logs or more precise mapping;
- B. Having a depth to bedrock of less than twenty-five feet according to the "Depth to Bedrock: Steele, Dodge, Olmsted and Winona Counties" data plate produced by the Minnesota Geological Survey – University of Minnesota in 2004, as modified by field investigation, reliable well logs or more precise mapping; and,
- C. For which there are contiguous adjacent areas with the Cummingsville or higher (Stewartville or Prosser) formations as the first encountered bedrock. An area for which the first encountered bedrock is the Decorah Shale, Platteville Limestone, or Glenwood Shale, that is separated from the Cummingsville or higher formations by a topographic saddle and is at a higher elevation than the saddle, is also excluded from the Decorah Edge. For purposes of this subdivision, the term "saddle" means a ridge between two peaks or summits.

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Subd. 3. Groundwater Supported Wetland. The term “groundwater supported wetland” shall include a wetland area that is saturated predominately by ground water, including wetlands in the vicinity of springs or seeps. Such wetlands may be associated with highly organic peat-like soils such as Haverhill (474B) and Palms (528B) soils.

Subd. 4. Edge Support Area. The term “Edge Support Area” shall include non-wetland areas with features associated with perched groundwater tables, groundwater discharges or groundwater water supported wetlands located in the Decorah Edge, including:

- A. Haverhill (474B), Root (471) and Palms (528B) soils;
- B. Areas where the seasonal groundwater table is within five feet of the surface and slopes are under 18%, including Shullsburg (312B or 312C), Littleton (477B), and similar soils;
- C. Areas with slopes over 18% within 50 feet of groundwater supported wetlands or Haverhill (474B), Palms (528B), Shullsburg (312B or 312C), Littleton (477B) or similar soils;
- D. Areas within 50 feet of springs;
- E. Areas within 50 feet of seeps;
- F. Areas of hydric soils in and adjacent to drainage ways draining groundwater supported wetlands;
- G. Areas within 50 feet of a perennial or ephemeral stream in the Decorah Edge; and,
- H. Areas of hydric soils buried by sedimentation adjacent to groundwater supported wetlands or in proximity to and at the same approximate elevation as groundwater supported wetlands.

Subd. 5. Minor Watershed. The term “minor watershed” shall mean a minor watershed as defined and mapped by the Minnesota Department of Natural Resources Division of Waters in 1999, as revised, and distributed by the Land Management Information Center.

Subd. 6. Map. The Planning Department shall maintain maps showing the approximate location and extent of the Decorah Edge. The maps will include those

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areas of the County within the boundary of the Decorah Edge as defined herein, plus, for the bedrock geology map only, an adjacent area determined based on half the distance of the reported accuracy of the source map. [In the case of the MGS bedrock geology map cited above, the reported accuracy is 100 meters or 330 feet, resulting in an added dimension of 50 meters or 165 feet.] The dimension of the adjacent area shall reflect the accuracy of the source maps, and is not intended as a buffer area. Where detailed site investigation identifies more accurate information as to the location and extent of the Decorah, Platteville, or Glenwood formations and areas of associated groundwater movements in adjacent portions of the Cummingsville and St. Peter formations, the detailed site information shall apply. The Planning Department shall maintain copies of the most current maps and update the maps from time to time as more reliable information becomes available.

59A.03. Local Government Unit. The Rochester Common Council shall be the local government unit for the purposes of the Wetland Conservation Act and Minn. Rules Chap. 8420.

59A.04. Technical Evaluation Panel. A technical evaluation panel is hereby recognized and authorized to participate in wetland determinations as identified in Minn. Rules part 8420.0240. A member of the Planning Department staff who is a technical professional with expertise in water resources management is hereby appointed to the technical evaluation panel to participate with the appointed persons from the Board of Water and Soil Resources and from the soil and water conservation district within Olmsted County. For projects affecting public waters, public waters wetlands, or wetlands within the shoreland protection zone, the panel also includes a technical professional employee of the Department of Natural Resources.

59A.05. Scope. Subdivision 1. This ordinance regulates impacts to or hydrologic alteration of wetlands or parts of wetlands and Edge Support Areas within the City of Rochester.

Subd. 2. In the event that an inconsistency exists between the provisions of state law, the Rules and this chapter, the provision that provides the most wetland protection shall apply.

Subd. 3. Wetlands in General. Except as provided in MN Rules Chap. 8420, wetlands within the City of Rochester must not be impacted unless replaced by restoring or creating wetland areas of at least equal public value.

Subd. 4. Field Investigation. The Zoning Administrator shall rely on the most current published soil survey, unless supplemented by a first order soil survey, National

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Wetlands Inventory, and other relevant data sources, and by on-site investigation, as a guide to identifying areas to be investigated for wetlands and Edge Support Areas.

59A.06 Areas Provided Special Protection. Subdivision 1. Except as provided in sections 59A.07, 59A.08 or subdivision 2, 3, or 4 of this section, groundwater supported wetlands and Edge Support Areas must not be impacted or altered hydrologically, wholly or partially. Development activities must be carried out in such a way as to maintain groundwater flow to or from a wetland, and to protect the quality, functions and values of the wetland as determined by the latest functional assessment method acceptable to the MN Board of Water and Soil Resources.

Subd. 2. All areas of buildable lots identified either in plats or general development plans (excluding outlots) shall be exempt from the special protection provided to Edge Support Areas if:

- A. part or all of the lot received interim or final grading plan approval by both the City Engineer and the Zoning Administrator prior to October 1, 2006; or
- B. the lot is part of a final plat approved prior to October 1, 2006.

Subd. 3 All areas of buildable lots shall be exempt from the special protection provided to groundwater supported wetlands if the lot is included in a development for which a replacement plan has been approved prior to October 1, 2006 addressing the groundwater supported wetland.

Subd. 4. Section 59A.06 subd. 1 shall not apply if the process described in section 59A.09 is followed with the resulting determination that there exists one of the following findings:

- A. The development activity involves the construction of local collectors or higher order streets, where the Council has found in its approval of a general development plan that:
  - (1) The traffic service standards of Section 61.526 cannot be met without providing for the street in question;
  - (2) The street in question is designated as a primary collector or higher order street, or the area served is designated as in need of a local collector in the

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ROCOG Long Range Transportation Plan; and,

- (3) The proposed alignment causes the least disruption to groundwater discharge interflow and recharge characteristics in comparison with suitable and practical alternative alignments; or
- B. The development activity involves the modification, realignment or other improvement of an existing public road by a road authority; or
- C. The development activity involves the construction of other infrastructure of a regional nature, such as regional trails, major power lines, regional stormwater ponds, water mains, or sewer interceptors, where the Council has determined that the proposed alignment causes the least disruption to groundwater discharge, interflow and recharge characteristics in comparison with suitable and practical alternative alignments; or
- D. The development activity involves the construction of park facilities in general development plans or subdivisions approved prior to October 1, 2006; or
- E. The development activity involves the construction of a new road in a development that is needed to provide secondary access to a residential area that would otherwise result in more than 50 homes relying on a single access, where the Council has determined that the platted alignment causes the least disruption to groundwater discharge, interflow and recharge characteristics, in comparison with suitable and practical alternative alignments and where the requirement for secondary access has not been waived; or
- F. The development activity involves the alteration of groundwater supported wetlands in conjunction with restoration or enhancement projects that are in accordance with section 59A.09. Enhanced or restored groundwater supported wetlands must be of at least equal function and value as determined by the latest functional assessment method acceptable to the MN Board of Water and Soil

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Resources located in the same geologic setting (fill or bedrock-dominated), and in the same minor watershed.

59A.07. Exemptions. A landowner may claim exemption from the provisions of the WCA and this Chapter if the property to be impacted or hydrologically altered, meets the exemption criteria contained in Minn. Rules part 8420.0420, which applies to wetlands. Any Edge Support Area associated with an exempted groundwater supported wetland shall also be exempted. Exemption decisions under Minn. Rules part 8420.0420 shall be made by the zoning administrator. A landowner intending to impact or hydrologically alter a wetland without replacement, claiming exemption, shall make application to the zoning administrator before beginning excavation, draining or filling activities for determination whether or not the activity is exempt. The zoning administrator may seek the advice of the technical evaluation panel as specified in Minn. Rules part 8420.0204(C). The administrator's decision is final unless appealed to the common council within 30 days after written notice of the zoning administrator's determination is mailed to the applicant. An exemption notice of decision shall be provided the landowner upon the zoning administrator's or common council's determination that the activity qualifies for exemption. The authority granted by the notice of decision shall be stayed during the time an appeal is pending before the MN Board of Water and Soil Resources.

59A.08. No-Loss. Subdivision 1. A landowner unsure if proposed work will result in a loss of wetlands may apply for a no-loss decision as specified in Minn. Rules part 8420.0315. No-loss decision under Minn. Rules parts 8420.0410 and 0415 shall be made by the zoning administrator. The zoning administrator may seek the advice of the technical evaluation panel on questions of wetland delineation and type. The administrator's decision is final unless appealed to the common council within 30 days after written notice of the zoning administrator's decision is sent to those required to receive notice of the decision.

Subd. 2. The landowner applying for a no-loss decision is responsible for submitting the proof necessary to show qualification for this determination. The authority granted by the decision shall be stayed during the time an appeal is pending before the MN Board of Water and Soil Resources.

59A.09. Sequencing and Replacement Plan Decisions. Subdivision 1. A landowner intending to impact a wetland who does not qualify for an exemption or no-loss decision shall obtain approval of a replacement plan from the common council. An applicant may either submit the information required for sequencing analysis as part of a replacement plan application or apply separately for a preliminary sequencing decision from the local government unit before preparing a complete replacement plan. The sequencing decision where submitted separately from the replacement plan under Minn. Rules part 8420.0325 and Sequencing Flexibility under 8420.0520, Subp. 7a, shall be

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made by the zoning administrator. Replacement plans intended to mitigate wetland impacts within the City of Rochester must involve the creation or restoration of wetlands located within Olmsted County.

Subd. 2. Replacement Plans: No person may impact a wetland, wholly or partially, without being eligible for an exemption or no-loss, or first receiving approval of a wetland replacement plan as specified in Minn. Rules part 8420.0500. A landowner proposing a wetland impact that requires replacement must apply to the city and receive approval of a replacement plan before impacting the wetland.

Subd. 3. Sequencing and replacement plan decisions under Minn. Rules parts 8420.0325, 8420.0330 and 8420.0500-.0544 and decisions regarding exceptions under 59A.06 subdivision 2 shall be made pursuant to the following procedures:

- A. Application for wetland replacement plans must be submitted to the zoning administrator. The contents of the plan shall comply with Minn. Rules part 8420.0330.
- B. The zoning administrator must determine that an application is complete based on Minn. Rules parts 8420.0305 to 8420.0330.
- C. The zoning administrator shall, within fifteen days of a complete application, transmit a copy of the application and notice of application to members of the technical evaluation panel, the commissioner; members of the public who have requested a copy.
- D. The zoning administrator shall, schedule a review before the common council to consider the application. Prior to said common council review the zoning administrator shall prepare a report recommending approval, approval with conditions, or disapproval of the proposed replacement plan.
- E. The common council shall act upon the application in conformance with Minn. Statutes 15.99. The common council may approve, approve with conditions, or disapprove the replacement plan application.
- F. The common council must base its decisions on the replacement standards in Minn. Rules parts 8420.0500 to

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8420.0544, and on the recommendation of the technical evaluation panel as specified in Minn. Rules parts 8420.0240. The common council must consider comments received from those required to receive notice.

- G. The decision of the common council shall be mailed to all parties listed in subpart 2 above and to the landowner within ten business days. The mailing to the applicant must include information on the process and time period to appeal the decision of the common council.

59A.10. Monitoring. Monitoring of replacement wetlands is the responsibility of the landowner of the property where the replacement wetland is located. The zoning administrator shall assure that the replacement plan monitoring and enforcement requirements of Minn. Rules part 8420.0810 shall be fulfilled. The technical evaluation panel must review replacement wetland monitoring reports as provided in Minn. Rules parts 8420.800 to 8420.0820.

59A.11. Wetland Banking. Subdivision 1. Wetlands may be restored or created within the City of Rochester for purposes of deposit in the wetland bank in accordance with Minn. Rules parts 8420.0700 - .0755. The zoning administrator is responsible for approving bank plans, certifying deposits, and the monitoring of banked wetlands and enforcement under the rules.

Subd. 2. Only wetland credits from wetland banks within Olmsted County may be used for wetland replacement when wetland within the City is impacted.

59A.12. Fees. The common council shall by resolution adopt a schedule of fees applicable to wetland delineation applications, no-loss applications, exemption applications, sequencing applications, replacement plan applications, banking plan applications, and monitoring reports submittals. The amount of the fees shall not exceed the reasonable value of the functions undertaken by the LGU.

59A.13. Appeals. Decisions made under this ordinance by the zoning administrator may be appealed to the Common Council. An appeal must be filed within 10 days after the date on which the decision is sent to those required to receive notice of the decision. Except for decisions related to Edge Support Areas, decisions of the Common Council may be appealed to the MN Board of Water and Soil Resources under Minn. Rules part 8420.0905 after final determination by the Common Council. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued according to Minn. Rules part 8420.0905 to the MN Board of Water and Soil Resources executive director within 30 days of receipt of the order.



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59A.14. Exceptions. Requests for exceptions to provisions of this ordinance related to Edge Support Areas (in which the applicant contends that the ordinance should not be applied to the property in question, in whole or in part) shall be heard by the City Council at the time of general development plan review, or at the time of wetland delineation, if a general development plan is not required. Applicants may seek exceptions to restrictions on disturbance of Edge Support Areas on the basis of public safety concerns, other overriding public interest, unreasonable hardship, or constraints that deny a reasonable use of the property.

59A.15. High Priority Areas. The City of Rochester is designated a high priority area under Minnesota Rules. Decisions regarding sequencing, replacement plans, and banking shall particularly favor preservation, restoration, and creation of wetlands in high priority areas as identified in water management plans pursuant to Minn. Rules part 8420.0835. Calcareous fens and wetlands, both natural and restored, located in Edge Support Areas are high priority areas.

59A.16. Delegation. The City of Rochester may by joint powers agreement delegate to the soil and water conservation district under Minn. Stat. §§ 471.59 and 103C.331, subdivision 19, the authority to administer all or any part of this ordinance.

(3969, 7/7/10)